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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 THE BANK OF NEW YORK MELLON,

10 Plaintiff,

11 v.

12 HILLCREST AT SUMMIT HILLS
13 HOMEOWNERS ASSOCIATION et al.,

14 Defendants.

Case No. 2:16-cv-01303-KJD-NJK

ORDER

15 Presently before the Court is Plaintiff's Motion for Summary Judgment (#45). Defendant
16 Edward Kielty Trust filed a response (#59) to which Plaintiff replied (#63). Also before the Court is
17 Defendant Edward Kielty Trust's Motion for Summary Judgment (#46). Plaintiff filed a response
18 (#58) to which Defendant Edward Kielty Trust replied (#62). Also before the Court is Defendant
19 Hillcrest at Summit Hills Homeowners Association's Motion to Dismiss Amended Complaint (#71).
20 Plaintiff filed a response (#74) to which Defendant Hillcrest at Summit Hills Homeowners
21 Association replied (#76). Also before the Court is Defendant Hillcrest at Summit Hills Homeowners
22 Association's Motion to Dismiss Amended Complaint (#73). Plaintiff filed a response (#75) to
23 which Defendant Hillcrest at Summit Hills Homeowners Association replied (#77).

24 **I. Background**

25 This case emerges from Summit Hills Homeowners Association's May 2013 non-judicial
26 foreclosure sale of the property located at 2216 Calm Sea Avenue, Las Vegas, Nevada 89106 ("the

Property”). All motions presently before the Court center in whole or in part around the question of what notice of default Summit Hills Homeowners Association was required to provide Plaintiff prior to its foreclosure sale on the Property.

II. Analysis

A. Certified Question

On April 21, 2017, in Bank of New York Mellon v. Star Hills Homeowners Association, this Court certified the following question to the Nevada Supreme Court: “Whether NRS § 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners associations to provide notices of default to banks even when a bank does not request notice?” Bank of New York Mellon v. Star Hill Homeowners Assoc., 2017 WL 1439671, at *5 (D. Nev. April 21, 2017).

In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth Circuit definitively answered the question that the statute’s “opt-in” framework was unconstitutional. Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (2016). However, that leaves this Court with the unresolved question of what notice must be provided. “It is solely within the province of the state courts to authoritatively construe state legislation.” Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). As such, state law questions of first impression like this one should be resolved by the state’s highest court. See Huddleston v. Dwyer, 322 U.S. 232, 237 (1944). Allowing the Nevada Supreme Court to answer this question before considering any other motions will provide this Court the necessary guidance as to how to handle the issue of notice and actual notice in light of Bourne Valley.

In Bank of New York Mellon, the Court did not and could not rely upon any controlling state law as to the requirements of notice. This Court faces the same predicament here. An answer to the above already certified question will provide much needed clarity, and may be dispositive of many of the issues currently before the Court in this case.

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1 **2. Hardship and inequity**

2 Both parties equally face hardship or inequity if the Court resolves the claims or
3 issues before the certified question has been resolved. And in the interim both parties stand to benefit
4 from a stay, regardless of the outcome of the question. A stay will prevent any additional,
5 unnecessary briefing and premature expenditures of time, attorney’s fees, and resources.

6 **3. Orderly course of justice**

7 At the center of this case is the question of what notice is now required under NRS
8 Chapter 116 in light of the Ninth Circuit decision Bourne Valley. The jurisprudence in this area of
9 unique Nevada law continues to evolve, causing parties in the scores of foreclosure-challenge actions
10 to file new motions or supplement the ones that they already have pending, resulting in
11 “docket-clogging entries and an impossible-to-follow chain of briefs in which arguments are
12 abandoned and replaced.” Nationstar Mortg., LLC v. Springs at Spanish Trail Assoc., 2017 WL
13 752775, at *2 (D. Nev. Feb. 27, 2017). Staying this case pending the Nevada Supreme Court’s
14 disposition of the certified question in Bank of New York Mellon will permit the parties to evaluate,
15 and the Court to consider, viability of the claims under the most complete precedent. This will
16 simplify and streamline the proceedings and promote the efficient use of the parties’ and the Court’s
17 resources.

18 Therefore, the Court orders this action stayed. Once the Nevada Supreme Court has
19 resolved the question certified in Bank of New York Mellon, either party may move to lift the stay.

20 **III. Conclusion**

21 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment
22 (#45) is **DENIED as moot**;

23 IT IS FURTHER ORDERED that Defendant Edward Kielty Trust’s Motion for Summary
24 Judgment (#46) is **DENIED as moot**;

1 IT IS FURTHER ORDERED that Defendant Hillcrest at Summit Hills Homeowners
2 Association's Motion to Dismiss Amended Complaint (#73) is **DENIED as moot**;

3 IT IS FURTHER ORDERED that Defendant Hillcrest at Summit Hills Homeowners
4 Association's Motion to Dismiss Amended Complaint (#75) is **DENIED as moot**;

5 IT IS FURTHER ORDERED that all pending motions are **DENIED without prejudice**;

6 IT IS FURTHER ORDERED that this action is **STAYED**.

7 DATED this 24th day of January, 2018.

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10 Kent J. Dawson
11 United States District Judge
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